

**House, John**

**From:** Bernisen, Teresa E  
**Sent:** Monday, March 29, 2004 7:21 PM  
**To:** Reynolds, Randy S; Ensign, Heidi E  
**Cc:** Lee, Lorraine  
**Subject:** beer price posting rules

**Importance:** High

Heidi and Randy, Attached are the changes we discussed to the beer price posting rules. Please review carefully. The last few pages are how the new rule would look without all the underline and strikethrough.

I'll send these to Kent and Phil per our discussion.

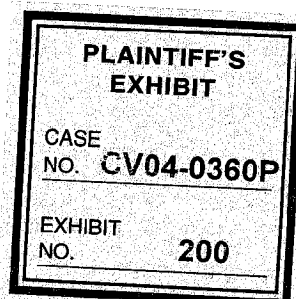
I've started to make the same changes to the wine rules and will e-mail you in next 1-2 days. But please review these in case you see things that need to be changed that would also apply to the wine rules.

The price posting bill is supposed to be signed on Wed. I'm thinking we'll have language ready end of this week or early next week. Lorraine, should we reserve time on the April 6 Board Work session?



WAC  
14-20 chang

14. Ensign  
25  
DEP EXHIBIT  
CAROL ANN RANDE  
NOTARY PUBLIC  
5-11-05



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## Proposed changes to beer price posting rules to implement SB 6737 DRAFT 2 3-25-04

### Purpose of rule changes:

- Implement changes made in SB 6737
- Combine and simplify rules
- Take out redundancy with RCWs (RCW 66.28.180)

### WAC 314-20-100 Beer distributor and supplier price postings.

Redundant  
with RCW

~~((1) Every beer distributor shall file with the board at its office in Olympia a price posting showing the distributor prices at which any and all brands of beer sold by such beer distributor shall be sold to retailers within the state.))~~

New  
opening so  
people know  
what this  
WAC is  
about.  
Definitions  
for clarity.

RCW 66.28.180 requires beer distributors and suppliers to file price postings with the board.

#### (1) Definitions--For the purposes of this section:

(a) A beer supplier means a microbrewery, domestic brewery, certificate of approval holder, beer importer, or beer distributor licensee.

#### (2) Filing deadlines.

Rearrange  
and reword  
for clarity  
and to  
combine  
WACs.

(a) Beer supplier filing deadlines	(b) Beer distributor filing deadlines
<p><i>[Following language from WAC 314-20-105(2), strike through and underlining maintained for comparison]</i></p> <p><del>((Filing date--))</del> <u>(i) All price postings, distributor appointments, ((All)) written contracts, and memoranda of oral agreements must be received by the board not later than the twenty-fifth day of the month, and if approved will become effective on the first day of the second calendar month following the date of such filing.</u></p> <p><u>(ii) The board will allow up</u></p>	<p><u>(i) All price postings must be received by the board not later than the tenth day of the month, and if approved will become effective on the first day of the calendar month following the date of ((such)) filing.</u></p> <p><u>(ii) The board will allow up to ((A)) an additional ((period, not to exceed)) five days ((, will be allowed)) for revisions of ((such)) postings to correct errors((,)) or omissions, ((ex- to meet competitive prices filed during the current posting-</u></p>

<p>to ((A))an additional five days  <del>((period will be allowed))</del> for  revisions of <del>((such))</del> filings to  correct errors and omissions <del>((or  or to meet competitive prices,))</del>  filed during the current posting  period, <del>((but))</del> if a revised  contract or memorandum of oral  agreement <del>((must be))</del> is <del>((on))</del>  filed with the board not later  than the first day of the month.  <del>((in order to become effective on  the first day of the following  month: Provided, That t))</del>The  board may in individual cases,  for good cause shown, extend the  <u>filing date</u> <del>((on which the  filings required by the rules are  to be received by the board.))</del></p>	<p><del>period, but))</del> if a revised  posting <del>((must be on))</del> <u>is filed</u>  <del>((at))</del> <u>with</u> the board <del>((office  by))</del> not later than the  fifteenth day of the month<del>((, in  order to become effective on the  first day of the next calendar  month)).</del> <del>((: Provided, That t))</del>  The board may in individual  cases, for good cause shown,  extend the <u>filing date</u> <del>((on  which the filings required by  the rules are to be received by  the board))</del>.</p>
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(c) When any price posting to be filed with the board under the provisions of this rule has been deposited in the United States mail addressed to the board, it ~~((shall))~~ will be deemed filed or received on the date shown by the United States post office cancellation mark on the envelope, ~~((containing it))~~ or on the date it was mailed if it ~~((proof satisfactory to))~~ is established to the satisfaction of the board ~~((establishes))~~ that the actual mailing occurred on an earlier date.

Clarify

Change to reflect electronic postings.

(3) Filing date exceptions--Whenever the ~~((tenth day of the month))~~ filing deadlines fall~~((s))~~ on Saturday, Sunday, or a legal holiday, an original price posting may be filed not later than ~~((the close of business))~~ midnight the next business day.

Clarify and add "supplier" so rules can be combined.

(4) No changes from previous month--If ~~((In the event that))~~ a beer supplier or distributor ~~((determines to))~~ makes no changes in any items or prices listed in the last filed and approved ~~((schedule))~~ price posting, ~~((such))~~ these prices ~~((listed in the schedule previously filed and in effect, shall))~~ will remain in

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effect for each succeeding posting period until a revised or amended ((schedule)) price posting is filed and approved ((, as provided herein)).

Clarify language. Add "supplier" so rules can be combined. Delete reference to "special forms," as most postings now electronic.

(5) ~~((Provision for filing of t))~~ Temporary price reductions-- ~~((In the event))~~ If a beer supplier or distributor ~~((elects to))~~ files price postings that list ~~((ing))~~ selected items on which prices are temporarily reduced for one posting period only, ~~((such filing))~~ these price postings ~~((shall be made on special forms provided for such purpose and))~~ must clearly reflect all items, the selling price ~~((thereof))~~, and the posting period for which the price reductions will be in effect. At the expiration of the posting period during which ~~((such))~~ the reductions were in effect ~~((ive))~~, the special filing will become void and the last regularly filed and effective price ~~((schedule))~~ posting ~~((shall))~~ will again become effective ~~((until subsequently amended pursuant to regular filing dates))~~.

Redundant with RCW

~~((5) Each price posting shall be made on a form prepared and furnished by the board or a reasonable facsimile thereof, and shall set forth:~~

~~((a) All brands, types, packages and containers of beer offered for sale by such beer distributor.~~

~~((b) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.))~~

~~((6) No beer distributor shall sell or offer to sell any package or container of beer to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer distributor and then in effect.))~~

~~((7) Quantity discounts are prohibited. No price shall be posted which is below acquisition cost plus ten percent of acquisition cost.~~

~~((8) Wholesale prices on a "close out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close out price shall not restock the item for a period of one year following the first effective date of such close out price.~~

Clarify language. Add definition of a distributor appointment for clarity.

~~((9))~~ (6) Distributor appointment changes--~~If an existing written contract or memorandum of oral agreement between a domestic winery, certificate of approval holder, wine importer, or wine~~

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~~distributor and a distributor, as filed in accordance with WAC 314-24-200, is~~

(a) A distributor appointment change is when a supplier terminates and appoints another distributor for a geographic area, for certain brands of beer and/or wine, or terminates and reappoints the entire contract.

(b) A beer supplier must notify the board if any of the contracts or agreements listed in WAC 314-20-100 are revised or terminated by either party. ~~((, and a new written contract or memorandum of oral agreement is made by such a supplier with another wine distributor in the affected trade area, the board, after receiving such new written contract or memorandum of oral agreement, and a corresponding wholesale price posting from the newly designated wine distributor, may put such filings into effect immediately.))~~  
The board may immediately authorize a price posting if a distributor assumes the wholesale price postings from the previously appointed distributor. ~~((Provided, That p))~~

(c) Prices and other conditions of ~~((any such filings which are))~~ price postings in effect at the time of ~~((such))~~ the termination ~~((shall))~~ may not be changed ~~((prior to the next applicable filing period))~~ until subsequent filings are submitted to the board and become effective ~~((per WAC 314-20-100)).~~

~~(10) The board may reject any price posting which it deems to be in violation of this or any other regulation or portion thereof which would tend to disrupt the orderly sale and distribution of beer. Whenever the board shall reject any posting the licensee submitting said posting may be heard by the board and shall have the burden of showing that said posting is not in violation of regulation and/or does not tend to disrupt the orderly sale and distribution of beer. Thereupon if said posting is accepted it shall become effective at the time fixed by the board. If said posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this regulation.~~

~~(11) All price postings filed as required by this regulation shall at all times be open to inspection to all trade buyers within the state of Washington and shall not within any sense be considered confidential.~~

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Delete  
language  
redundant  
with RCW.

~~(12) Any beer distributor or employee authorized by his distributor employer may sell beer at the distributor's posted prices to any authorized retail licensee upon presentation to such distributor or employee at the time of purchase of a special permit issued by the board to such licensee.~~

~~(a) Every Class authorized retail licensee upon purchasing any beer from a distributor, shall immediately cause such beer to be delivered to his licensed premises, and he shall not thereafter permit such beer to be disposed of in any manner except as authorized by his license.~~

~~(b) Beer sold as provided herein shall be delivered by such distributor or his authorized employee either to such retailer's licensed premises or directly to such retailer at the distributor's licensed premises. Provided, however, That a distributor's prices to retail licensees shall be the same at both such places of delivery.~~

Clarify  
language.

~~((13)) (7) Price postings for new distributors--When the board issues a new beer distributor((13)) license ((is issued by the board)), the ((holder thereof)) licensee may file an initial price schedule and request that ((such)) the posting be placed into effect immediately. The board may grant ((such)) this immediate approval ((provided that such)) if the posting is in compliance with this section and with all other applicable laws and rules ((regulatory requirements, and that contracts and memoranda are on file, in accordance with WAC 314-20-105)).~~

Clarify  
language  
and  
combine  
rules.

*[Following language from WAC 314-20-105(8)(9), strike through and underlining maintained for comparison]*

(8) Accommodation sales - ~~((Provided, That t))~~ The provisions of this subsection ~~((shall))~~ do not apply, and filings ~~((will))~~ are not ~~((be))~~ required ~~((in the instance of beer))~~ when distributors make ~~((ing))~~ accommodation sales to other beer distributors ~~((when such))~~ and these sales are made at a selling price ~~((net to))~~ that does not exceed the laid-in cost of the beer being sold. Accommodation sales may only be made when the distributor purchasing the beer is an appointed distributor of the supplier, when the distributor is an authorized purchaser of the brand and product being sold, and when the supplying distributor is appointed by the

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supplier. (~~(, having been designated as an authorized purchaser by the manufacturer or importer of the product being sold, as demonstrated by an existing contract or memoranda on file and in effect under the provisions of this rule))~~).

(9) Consignment sales - ((Holders of))((e)) Certificate of approval holders may ship beer into this state when the beer has been sold and consigned to the holder of a beer importer's license at ((his)) the licensed premises. The bill of lading covering ((such)) this consignment ((shall)) may not be changed or the beer diverted unless ((such)) the diversion is to another beer importer, and the certificate of approval holder immediately notifies the board ((so notified immediately)).

Phil, Do we need this? Neither Randy or Heidi know why it's needed anymore. Would deleting change a current practice?

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